IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6639 OF 2004

Bal Vinayak Joshi & Ors. ..Petitioners.

Vs.

Sambhaji Namdeo Deshmukh & Ors. ..Respondents.

....

Ms.A.N.Helekar for the Petitioners.

Mr.D.S.Mhaispurkar for Respondent Nos.1 to 3, 5, 7 and 8.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

16th March, 2006.

P.C. :

Counsel appearing for the Respondents states, after the matter has been argued, that the Respondents do not press the application (Exh.G hereto and Exh.98 before the Trial Court) for withdrawal of the suit under Order 23 of the Code of Civil Procedure, 1908, but seek liberty to file a proper application. In the circumstances, the

impugned order dated 2nd August, 2004 of the Civil Judge, Senior Division at Pune is quashed and set aside. However, it is clarified that the withdrawal of the aforesaid application shall not preclude the Respondents from moving a fresh application. It would be for the Learned Trial Judge to consider as to whether permission under Rule 3 of Order 23 should be granted and whether the grounds which are set out therein are established to the satisfaction of the Court.

All the rights and contentions of the parties are kept open

The Petition is accordingly disposed of.